

MONTANA BOARD OF HORSE RACING MEETING  
10:00 A.M., OCTOBER 4, 2008  
COLONIAL INN RED LION  
2301 COLONIAL DRIVE  
HELENA, MT

Approved Minutes

ATTENDANCE:

Al Carruthers	Chairman	Sue Austin	Board Member
Topper Tracy	Board Member	John Ostlund	Board Member
Susan Egbert	Board Member	Ryan Sherman	Executive Secretary
Sherry Meador	Legal Counsel		

PUBLIC IN ATTENDANCE: Bill Ogg, Jim Espy, Dave Wheeler, Toni Wheeler, Christian Mackay

CALLED TO ORDER:

Chairman Carruthers called the meeting to order at 10:00am

INTRODUCTIONS:

MINUTES:

Member Austin moved to approve the July 11<sup>th</sup> minutes. Member Ostlund seconded the motion. Motion passed.

BUDGET REPORT:

Executive Director Mackay presented updated budget to Board members. As of October 1<sup>st</sup>, there is a cash deficit of \$12,000 that is being covered by DOL. Mackay informed the board that they would not be able to carry the deficit for any length of time. The Board was informed that Lottery projected a year end handle of \$500,000 for fantasy sports games which would mean \$80,000 in revenue for MBOHR. Lottery is spending \$50,000 in the next month for advertising. Director Mackay suggested MBOHR lay off all staff for a couple of months until revenue compensates for cash deficit. The Board opposed laying off staff because now is when staff is planning for next year's racing events. Mackay then advised board to request a bridge loan from DOA in anticipation of additional revenue through fantasy sports. The Board requested DOL to give to them an itemized list of expenses so that there was a better understanding by the board as to where funds are being expended. The Board discussed a request for general fund dollars during the next legislative session. Mackay stated that the agencies have already submitted their proposed budgets to the Governor's budget office. Any request for funding must come through a "dog and cat" bill by a legislator.

#### INSURANCE/WORKERS COMP:

Sherry Meador provided the following report to the Board -- Currently, Miles City, Great Falls, and Billings are paying \$3900 to \$4300 per race day for accident and health with limited disability and medical (\$3900 is for \$500,000 in accident medical expense which is the industry standard; \$4300 is for \$750,000 in accident medical expense as was required by Yellowstone County Attorney). Accordingly, current track coverage for catastrophic jockey insurance over 20 race days is \$82,000 -- no workers compensation is provided.

Montana's Constitution provides that all persons have a right to recover in court unless covered under the Workers Compensation Act. Art. II, § 16, Montana Constitution, 1972. This means that if a person is injured during employment, the employer is subject to a claim by the employee unless that employer provides coverage under the Workmen's Compensation laws of this state. If workers compensation is provided, that program is the exclusive remedy for the employee's injury and the employer is protected no matter whose negligence caused the injury. Montana is the only state with this constitutional provision, and therefore, cannot provide a separate fund of limited resources as an exclusive remedy similar to Washington State.

Montana's Workers Compensation Act specifically exempts jockeys; and in another section, trainers, assistant trainers, exercise persons, and pony persons performing services under a MBOHR license while on the grounds of a licensed race meet. MCA §39-71-401(2)(n),(o). This exemption was enacted by the state legislature in 1999. While this exemption allows owners, trainers, and tracks (anyone who could be considered an employer of these exempt positions) to not provide workers compensation, they remain potentially liable to them for lost wages if there is an injury at the track. (Note: Montana's equine activity statutes, providing that there is no liability for risks inherent in equine activities, does not apply to the horse racing industry. MCA §27-1-728.)

John Unick, president of the Thoroughbred Racing Division with MOC insurance, provides insurance for approximately 80% of the tracks across the country, and provides the jockey insurance for Montana's three tracks. He said workers comp for jockeys would be approximately 2.5 times the rate for medical coverage (currently we pay \$3900/race day) but that we could cut that rate down significantly through more coordinated efforts between the board and the tracks and better oversight by the board on fraudulent claims and track safety. For an estimated 26 race days for 2009 at \$2500 to \$3000 x 2.5/day, premiums would be approximately \$160,000 to 200,000 for workers comp coverage on all jockeys for all tracks (with the assumption that Missoula will return to racing). If the tracks continued to pay ½ of what they had been paying for medical only, \$1950/day -- approximately \$50,000 total; and license fees for trainers, owners, and jockeys increased incrementally (given that they are the beneficiaries of this plan)— approximately \$20,000. The remainder (\$90,000 to \$130,000) would need to come from simulcast, advance deposit wagering, and Fantasy sports.

MBOHR could thus purchase a workers compensation plan for Jockeys, naming trainers, owners, and the tracks as additionally insured, thus providing adequate compensation for high risk key employees of the racing industry and protecting the foundation on which the industry is based.

Board members and representatives of the track responded favorably to the plan for getting workers compensation for jockeys in the 2009 season.

#### ADVANCE DEPOSIT WAGERING:

Ryan Sherman gave the Board an update on efforts to get ADW hubs licensed in Montana. As reported by Sherman, we currently have one ADW provider licensed within the state (TVG). We have generated a total amount from TVG so far of \$9,000. We are also in negotiations at this time with XpressBet, a Magna Entertainment-owned company. We should be through with the negotiations in a very short amount of time. We are trying to work with them to secure a good rate, plus help Montana Simulcast Partners with a better rate on decoders and percentages. They are in control of several big-market tracks such as Santa Anita and Gulfstream Park.

We also are trying to work with the Department of Justice to help us in securing licenses and source market fees from several different companies that are currently accepting wagers from Montana, but are not currently licensed with us. Sherry has been working with DOJ on this letter.

We also have a company that has expressed interest in helping us start our own advanced deposit wagering company. Sherman been talking with them to see if this would be viable for Montana and they are sending us a rate sheet. They would host the company for us, while just taking a percentage for doing so. I think that this could be an option down the road. Start-up costs are a main concern at this time.

Sherman has also researched other states and how they go about working with these various companies. Many states have also had long-drawn out processes to get these companies licensed, but he thinks with the help of the DOJ, we will be able to move forward at a rapid pace to secure licenses and receive a portion of the funds that are generated by Montana residents through these companies

Bill Ogg commented that he was thrilled the Board was finally getting money from ADW and was frustrated that it had taken so long to get moving on it.

#### MONTANA SIMULCAST PARTNERS:

The board reviewed the letter presented to them by Tom Tucker of MSP regarding the decrease of revenue that he believed was a result of ADW. The Board discussed the status of MSP, as a non-profit, with track managers serving as directors. Tucker was most concerned with rates on decoders and signal fees. He believed that if sites could go from 4% to 5% as a site facility he could keep his sites open and get more sites. Sherman informed the board that he hoped to create a working percentage for everyone. Chairman Carruthers, Bill Ogg, and Jim Espy stated that it was important to keep MSP going.

#### RULES COMMITTEE:

Member Tracy moved that the Board appoint a rules committee to review and propose changes in the rules. Member Austin seconded the motion. Motion carried. Veterinarian Kelly Manzer, Steward Dave Wheeler, and Member Austin were appointed to the rules committee.

#### NEW LICENSE CATEGORY:

Sherman suggested including a Pioneer License to recognize those who have participated in past race meets and wish to have access to the barns. Member Tracy noted it was a good idea. The Board agreed to postpone discussion of the new license to the next board meeting.

#### RAINOUT/CANCELLATION:

Billings track requested to keep \$20,000 (50% of purse carryover which has already been allotted) not spent because of rainout. This would allow Billings to keep \$21,000 as a carryover for 2009. Member Ostlund moved to approve request. Member Tracy seconded motion. Motion passed. Al questioned, from a horseman's perspective, why does there need to be such a high carryover. Jim Espy stated that it was necessary so there is enough money to cover immediate costs.

#### BUILDING THE INDUSTRY/MARKETING:

Member Egbert asked what marketing was occurring for the race meets. Bill Ogg stated that Great Falls spent \$20,000 in advertising this past season. Lots of advertising was done in trades. Ogg noted that Great Falls still needed the additional funding (\$60,000 in 2008) to make ends meet for the next season. They are hoping to increase their race days by two to include the July 4<sup>th</sup> holiday weekend.

#### RACE DATES:

Member Ostlund moved to suspend rules for applying for race dates to December 1<sup>st</sup> so that the tracks and Board can have a better handle on revenue streams. Member Austin seconded the motion. Motion passed. Member Egbert asked if suspended date conflicted with publication of premiums for stakes races. The Board concluded that there was no conflict.

#### PUBLIC COMMENT:

In accordance with Mont. Code Ann. §2-3-103, the meeting was opened for public comment. Chairman Carruthers read the open forum statement and informed the public that they could have a short time for comment but that no action could be taken on any issue at this time.

Jim Espy commented to the Board how well Executive Secretary Ryan Sherman did at the Billings race meet. He said that Sherman had a young fresh mind, was a good worker, and was a great people person.

#### ADJORNMENT:

The meeting was adjourned at 12:38pm.

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Signature

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Date